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A/AC.242/L.13
10 August 1994

ORIGINAL: ENGLISH

AD HOC COMMITTEE ON THE ELABORATION
OF AN INTERNATIONAL CONVENTION
DEALING WITH THE SAFETY AND
SECURITY OF UNITED NATIONS AND
ASSOCIATED PERSONNEL
1-12 August 1994

DRAFT REPORT OF THE AD HOC COMMITTEE

Rapporteur: Ms. Pascaline BOUM (Cameroon)

I. INTRODUCTION

1. The Ad Hoc Committee on the Elaboration of an International Convention Dealing with the Safety and Security of United Nations and Associated Personnel established by the General Assembly in its resolution 48/37 of 9 December 1993, held its first session at United Nations Headquarters from 28 March to 8 April 1994. On the basis of the same resolution, it held a second session, also at United Nations Headquarters, from 1 to 12 August 1994.

2. The Ad Hoc Committee was open to all Member States in accordance with paragraph 1 of resolution 48/37. 1/

3. The first session was opened by Mr. Hans Corell, Under-Secretary-General, the Legal Counsel, who represented the Secretary-General and made an introductory statement.

4. At both sessions of the Ad Hoc Committee, Ms. Jacqueline Dauchy, Director of the Codification Division of the Office of Legal Affairs, acted as Secretary of the Ad Hoc Committee; Mr. Andronico O. Adede, Deputy Director (Codification Division, Office of Legal Affairs), acted as Deputy Secretary; and Ms. Mahnoush Arsanjani and Ms. Christiane Bourloyannis-Vrailas, Legal Officers, and Ms. Darlene Prescott, Associate Legal Officer (Codification Division, Office of Legal Affairs), acted as assistant secretaries.

5. At the 1st meeting of the first session, on 28 March 1994, the Ad Hoc Committee elected its Bureau, as follows:

Chairman: Mr. Philippe Kirsch (Canada)

Vice-Chairmen: Mr. Raúl Alberto Ricardes (Argentina)

Mr. Saeid Mirzaee-Yengejeh (Islamic Republic of Iran)

Mr. Volodymyr D. Khandogy (Ukraine)

Rapporteur: Ms. Pascaline Boum (Cameroon), Rapporteur

6. The three Vice-Chairmen being unavailable for the second session, the Ad Hoc Committee, at the 2nd meeting of its second session, elected three new Vice-Chairmen as follows:

Ms. Silvia A. Fernández de Gurmendi (Argentina)

Mr. Hossein Enayat (Islamic Republic of Iran)

Mr. Oleksandr F. Motsyk (Ukraine)

7. The agendas the Committee adopted for its two sessions (A/AC.242/L.1 and L.4) were identical and read as follows:

1. Opening of the session.

2. Election of officers.

3. Adoption of the agenda.

4. Organization of work.

5. Elaboration, pursuant to paragraph 1 of General Assembly resolution 48/37 of 9 December 1993, of an international convention dealing with the safety and security of United Nations and associated personnel, with particular reference to responsibility for attacks on such personnel.

6. Adoption of the report.

8. At both its first and second sessions, the Ad Hoc Committee decided to constitute itself as a Working Group of the Whole for the consideration of the texts before it. The Bureau and the Secretariat of the Ad Hoc Committee also served as the Bureau and the Secretariat of the Working Group.

9. The Ad Hoc Committee, having received a request for participation as an observer in the work of the Committee and its Working Group from the Permanent Observer Mission of Switzerland to the United Nations, decided to grant that request.

10. The Ad Hoc Committee, having received a similar request from the International Committee of the Red Cross (ICRC), also decided to grant that request.

II. PROCEEDINGS AT THE FIRST SESSION

11. At its first session, the Ad Hoc Committee decided to hold a brief general debate. 2/

12. Also at its first session, the Ad Hoc Committee had before it a proposal submitted jointly by New Zealand and Ukraine (A/AC.242/L.2 and Corr.1), 3/ as well as a working document submitted by Denmark, Finland, Iceland, Norway and Sweden (A/AC.242/L.3) 3/ and a note by the Secretary-General (A/AC.242/1). It decided to take as a basis for its work the joint proposal by New Zealand and Ukraine, on the understanding that the "elements" of the working paper submitted by the five Nordic countries would be examined in conjunction with the articles of the joint proposal with which they were connected.

13. The Working Group proceeded accordingly and also considered a number of amendments and proposals for new articles which were submitted to it as the work proceeded. 4/

14. The Working Group proceeded in three stages. In the first stage (1st to 9th meetings), it examined on first reading the various articles of the joint proposal. 5/ At the 9th meeting, representatives of the Office of Legal Affairs and of the Office of the United Nations Security Coordinator addressed the Working Group and answered questions raised from the floor in relation to the practical and legal issues encountered by the United Nations in ensuring the safety and security of United Nations and associated personnel in the framework of United Nations operations. A transcript of this exchange of views was subsequently made available to delegations.

15. In the second stage (9th and 10th meetings), the Working Group reviewed on second reading articles 1 and 2 of the joint proposal. 5/

16. In a third stage, the Working Group agreed that the work would continue in the framework of two consultation groups respectively entrusted with articles 1-9 and 10-27. Mr. Wael Aboulmagd (Egypt) and Ms. Silvia Fernández de Gurmendi (Argentina) acted as coordinators of the consultation groups. The work of the consultation groups resulted in a "negotiating text", which consisted of articles 3-27. Although there was a general discussion on articles 1 (definitions) and 2 (scope of the Convention), no text was included for those articles in the negotiating text.

17. At the conclusion of its first session, the Ad Hoc Committee decided, pursuant to the authorization contained in paragraph 2 of General Assembly resolution 48/37, to hold a further session from 1 to 12 August 1994. It furthermore agreed to take, as a basis for its work at that session, the negotiating text referred to in paragraph 16 above, on the understanding that it was only intended to serve as a negotiating text without committing or prejudicing the position of any delegation on any of its provisions. Some

delegations expressed reservations about particular provisions in the negotiating text and reserved their right to introduce new provisions at the next session.

III. PROCEEDINGS OF THE SECOND SESSION

18. In accordance with the decision referred to in paragraph 17 above, the Working Group took as a basis for its work the negotiating text referred to in paragraph 16 above, on the understanding reflected in paragraph 17 above.

19. In the course of its work, the Working Group heard a statement from, and had an exchange of views with, the representative of the Office of the United Nations Security Coordinator. It was also apprised of the content of communications received by the Chairman from that same Office, from the United Nations High Commissioner for Refugees and from the Executive Director of the World Food Programme (WFP).

20. The Working Group started its work with a brief review of the negotiating text. It then entrusted an open-ended Informal Working Group, chaired by Ms. Fernández de Gurmendi, Vice-Chairman of the Ad Hoc Committee, with the preparation of a negotiating text for articles 1 (definitions) and 2 (scope of the Convention).

21. At the 5th meeting of the Working Group, on 5 August 1994, the Chairman of the Informal Working Group introduced a single article (numbered 1-2) on scope and definitions which represented the outcome of the work of the Informal Working Group.

22. At its 6th meeting, on 8 August 1994, the Working Group had before it a consolidated negotiating text which contained the article 1-2 referred to above, followed by articles 3 to 27 of the negotiating text worked out at the first session.

23. From its 6th to ... meetings, the Working Group discussed articles ... to ... of the consolidated negotiating text, as well as amendments and proposals for new articles submitted at the first and second sessions of the Ad Hoc Committee. 4/

24. A summary of that discussion on an article-by-article basis is to be found in paragraphs ... to ... below [see conference room papers A/AC.242/1994/CRP.14 and addenda].

Notes

1/ For the membership of the Ad Hoc Committee at its first session, see document A/AC.242/INF/1; for the membership of the Ad Hoc Committee at its second session, see document A/AC.242/INF/2.

2/ A summary of that debate is to be found in annex I to the present report.

3/ Also reproduced in document A/AC.242/2, sect. II.

4/ For the text of the amendments and proposals see annex III to the present report.

5/ A summary of the discussion is to be found in annex II to the present report.

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ASSOCIATED PERSONNEL
1-12 August 1994

DRAFT REPORT OF THE AD HOC COMMITTEE

Rapporteur: Ms. Pascaline BOUM (Cameroon)

I. INTRODUCTION

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13. The Working Group proceeded accordingly and also considered a number of amendments and proposals for new articles which were submitted to it as the work proceeded. 4/

14. The Working Group proceeded in three stages. In the first stage (1st to 9th meetings), it examined on first reading the various articles of the joint proposal. 5/ At the 9th meeting, representatives of the Office of Legal Affairs and of the Office of the United Nations Security Coordinator addressed the Working Group and answered questions raised from the floor in relation to the practical and legal issues encountered by the United Nations in ensuring the safety and security of United Nations and associated personnel in the framework of United Nations operations. A transcript of this exchange of views was subsequently made available to delegations.

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16. In a third stage, the Working Group agreed that the work would continue in the framework of two consultation groups respectively entrusted with articles 1-9 and 10-27. Mr. Wael Aboulmagd (Egypt) and Ms. Silvia Fernández de Gurmendi (Argentina) acted as coordinators of the consultation groups. The work of the consultation groups resulted in a "negotiating text", which consisted of articles 3-27. Although there was a general discussion on articles 1 (definitions) and 2 (scope of the Convention), no text was included for those articles in the negotiating text.

17. At the conclusion of its first session, the Ad Hoc Committee decided, pursuant to the authorization contained in paragraph 2 of General Assembly resolution 48/37, to hold a further session from 1 to 12 August 1994. It furthermore agreed to take, as a basis for its work at that session, the negotiating text referred to in paragraph 16 above, on the understanding that it was only intended to serve as a negotiating text without committing or prejudicing the position of any delegation on any of its provisions. Some

delegations expressed reservations about particular provisions in the negotiating text and reserved their right to introduce new provisions at the next session.

III. PROCEEDINGS OF THE SECOND SESSION

18. In accordance with the decision referred to in paragraph 17 above, the Working Group took as a basis for its work the negotiating text referred to in paragraph 16 above, on the understanding reflected in paragraph 17 above.

19. In the course of its work, the Working Group heard a statement from, and had an exchange of views with, the representative of the Office of the United Nations Security Coordinator. It was also apprised of the content of communications received by the Chairman from that same Office, from the United Nations High Commissioner for Refugees and from the Executive Director of the World Food Programme (WFP).

20. The Working Group started its work with a brief review of the negotiating text. It then entrusted an open-ended Informal Working Group, chaired by Ms. Fernández de Gurmendi, Vice-Chairman of the Ad Hoc Committee, with the preparation of a negotiating text for articles 1 (definitions) and 2 (scope of the Convention).

21. At the 5th meeting of the Working Group, on 5 August 1994, the Chairman of the Informal Working Group introduced a single article (numbered 1-2) on scope and definitions which represented the outcome of the work of the Informal Working Group.

22. At its 6th meeting, on 8 August 1994, the Working Group had before it a consolidated negotiating text which contained the article 1-2 referred to above, followed by articles 3 to 27 of the negotiating text worked out at the first session.

23. From its 6th to 12th meetings, the Working Group discussed articles 1-2 to 26 bis of the consolidated negotiating text, as well as amendments and proposals for new articles submitted at the first and second sessions of the Ad Hoc Committee. 4/

24. A summary of that discussion on an article-by-article basis is to be found in annex I to the present report [see conference room papers A/AC.242/1994/CRP.14 and addenda].

Notes

1/ For the membership of the Ad Hoc Committee at its first session, see document A/AC.242/INF/1; for the membership of the Ad Hoc Committee at its second session, see document A/AC.242/INF/2.

2/ For a summary of that debate, see document A/AC.242/2, paras. 18-25.

3/ Also reproduced in document A/AC.242/2, sect. II.

4/ For the text of the amendments and proposals see annex II to the present report.

5/ A summary of the discussion is to be found in document A/AC.242/2, paras. 33-171.

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DRAFT REPORT OF THE AD HOC COMMITTEE

Rapporteur: Ms. Pascaline BOUM (Cameroon)

Addendum

IV. REVISED NEGOTIATING TEXT AS IT EMERGED FROM THE WORK OF THE AD HOC COMMITTEE

1. The work of the Ad Hoc Committee at its two 1994 sessions resulted in the revised negotiating text reproduced in paragraph 4 below. This text is intended to serve as a negotiating text without committing or prejudicing the position of any delegation on any of its provisions. Some delegations expressed reservations about particular provisions in the text and reserved their right to introduce new provisions at a later stage.

2. In introducing the revised negotiating text, the Chairman indicated that the new text was the result of consultations among delegations from all regional groups and aimed at improving the original negotiating text to the extent possible. He noted that certain important differences had not yet been bridged as regards, in particular, the nature of the operations and the categories of personnel to be covered by the future instrument. While recognizing that the absence of agreement on the scope of application and on definitions complicated the discussion on the rest of the text, he pointed out that those uncertainties affected only a limited number of articles and that it had thus been possible to make progress on various aspects. He singled out in that context articles 3, 4, 5, 9 and 21.

3. A number of delegations agreed that the revised negotiating text provided an improved basis for further work and expressed satisfaction at the progress achieved on the extremely important issue of the safety and security of

personnel involved in United Nations operations. It was stressed that the matter was an urgent one on which the momentum should not be lost. Emphasis was also placed on the need for careful reflection on the results achieved so far.

4. The revised negotiating text reads as follows:

[insert text of A/AC.242/1994/CRP.13/Rev.1]

V. RECOMMENDATION CONCERNING THE CONTINUATION OF THE WORK

5. Bearing in mind paragraph 5 of General Assembly resolution 48/37, in which the Assembly had recommended that a working group be re-established at its forty-ninth session in the framework of the Sixth Committee in the event that further work was required for the elaboration of the draft convention, the Committee recommends to the General Assembly that it re-establish a working group in the framework of the Sixth Committee during the next session of the Assembly, which would meet from 10 to 21 October 1994, to continue consideration of the revised negotiating text and of proposals relating thereto.

ANNEXES

ANNEX I

Summary of the Working Group's debate at the second session of the Ad Hoc Committee

[Document A/AC.242/1994/CRP.14 and Add.1-3]

ANNEX II

Amendments and proposals for new articles submitted at the first and second sessions of the Ad Hoc Committee

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1-12 August 1994
Agenda item 5

ELABORATION, PURSUANT TO PARAGRAPH 1 OF GENERAL ASSEMBLY RESOLUTION 48/37 OF 9 DECEMBER 1993, OF AN INTERNATIONAL CONVENTION DEALING WITH THE SAFETY AND SECURITY OF UNITED NATIONS AND ASSOCIATED PERSONNEL, WITH PARTICULAR REFERENCE TO RESPONSIBILITY FOR ATTACKS ON SUCH PERSONNEL

Proposal by Belarus

1. The following new article should be inserted between current articles 20 and 21.

"Article ...

"Consultations

"If a dispute between two or more States Parties arises out of the application or interpretation of the present Convention, consultations between them shall be held upon the request of any of them. At the request of any of the parties to the dispute, the United Nations shall be invited to join in the consultations."

2. In current article 21, insert the following new paragraph:

"1. If a dispute is not disposed of as a result of the consultations referred to in article ... within one month from the date of their inception, any of the parties may request that it be submitted to arbitration."

94-32361 (E) 100894 10/08/94

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Proposal by the United States of America

Article 1

Scope of application and definitions

3. This Convention shall not apply to a United Nations operation authorized by the Security Council as an enforcement action under Chapter VII of the Charter of the United Nations when any of its personnel are engaged as combatants in an international armed conflict of the kind referred to in common article 2 of the Geneva Conventions of 12 August 1949.

94-32392 (E) 100894

100894

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Proposal by Thailand

States Parties undertake to establish their jurisdiction over the crimes committed in the host or transit State by the personnel that they have assigned to participate in a United Nations operation and to submit the alleged offenders to their competent authorities for the purpose of prosecution upon request of the States in which the crimes were committed, in the cases where the immunity of the alleged offenders was not waived.

94-32494 (E) 110894 *11/08/94*

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Proposal by the Russian Federation for inclusion in the preamble to the convention

"Recognizing the right of the State Party to withdraw, after consultations with the Secretary-General of the United Nations, its citizens participating in such operation,"

94-32529 (E) 110894

110894